ABl. Before that there is — downwards. Almost automatically I would ease foot off accelerator if there is a slope downwards. But this slope was so gradual I didn't have to ease." This is what the first defendant said in evidence and I accepted what he said. I rejected the contention that he was speeding down a slope and was accordingly unable to pull up in time behind the taxi which I did not find to be in motion.

Secondly, I did not consider that, by acting as he did, the first defendant knew or should have known that by following the taxi 50 to 60 feet behind it at 30 m.p.h. he could not in an emergency stop suddenly without endangering his own life as the Court of Appeal found in the case of the scooterist.

I found that, in the "agony of collision" as it is sometimes called, the first defendant braked sharply and went into a skid for which he was not responsible at a time when he deemed it unsafe to swerve to the left or the right, because of the sudden action of the taxi driver which left him no alternative in the matter at all.

I found that there was no excuse whatever for the second defendant's sudden stop and that this took the truck by surprise as it had followed him previously for a mile without mishap at approximately the same speed in the case of both vehicles and at a distance between them of 20 yards.

Counsel for the second defendant submitted that the truck should have kept at least 75 feet behind the taxi if they were both travelling at about 30 m.p.h. and that on his own version there was negligence on the part of the first defendant. If the taxi moved forward some 60 feet before coming to a stop and if the truck had been some 60 feet behind it this would have given the truck a total distance of 120 feet within which to pull up. The first defendant said that it was difficult to be exact about distances when he very frankly altered his original estimate of 60 feet between them to 50 feet. He also very frankly said that 50 feet would be a safe distance unless the vehicle ahead pulled up abruptly without warning. I did not hold this statement against him because this was what the court had to decide.

Having regard to his unblemished record as a military driver and the favourable impression I formed of him as the only credible witness in the case I decided that he was not to blame for the collisions even if a rigid application of the distances given by him might have suggested that he was not within the braking distances set out in the Highway Code which are themselves, at best, guide-lines. I did not regard his own estimates of distances as absolutely infallible. I found it difficult, in all the circumstances, to hold that he was following so closely behind the taxi or at such a high speed that culpability on his part had been established. The emergency was created by the wanton conduct of the taxi driver himself whose undoubted negligence both from the point of view of causative potency as well as blameworthiness was the causa causans of the collisions.

I considered the fact that brake marks of 80 and 100 feet long had been left on the road by the truck and that these might suggest a higher speed on the truck's part than 30 m.p.h. Counsel for the truck-driver said that brake marks of 90 feet were consistent with his evidence. I did not accept the contention of counsel for the taxi-driver that the truck's speed was excessive on the basis of the brake-marks alone. I found it difficult to draw an inference from the Highway Code figures alone which are cited by *Bingham* at page 87 that the truck must have been travelling at much more than 30 m.p.h. in view of the very favourable impression I formed of the truthfulness of the truck-driver as a witness although I am aware of the tendency of drivers generally to minimise the gravity of their own performances as drivers and to exaggerate that of those with whom they collide. The first defendant showed a refreshing departure from this tendency. For example, he altered his original estimate of the distance between the taxi and his truck from 60 feet to 50 feet to his own disadvantage when there was no necessity to do so.

I did not therefore find as a fact that the truck's speed had been proved to be greater than 30 m.p.h. although it might have very slightly exceeded it, as his counsel said. Even the van-driver, for what it is worth, said that the truck's speed was the same as the taxi's *i.e.* 30 m.p.h.

On all the probabilities of the case, including my assessment of the credibility of witnesses, I held the truck-driver to be blameless.

I therefore found the second defendant solely to blame for the accident and gave judgment against him in the agreed damages with costs.

Ordered accordingly.

Solicitors: *Murphy & Dunbar; Rodyk & Davidson; Battenberg & Talma.*

SEA BREEZE NAVIGATION CO. S.A. v. OWNERS OF SHIP "HSING AN"

[O.C.J. (Chua J.) October 5, 1973]

[Singapore — Admiralty *in Rem* Suit No. 130 of 1973]

Practice and Procedure — Writ of summons in rem — Application to set aside writ on grounds that claim discloses no reasonable cause of action — Alternative application for proceedings to be stayed on grounds that they are vexatious and oppressive to the defendants and an abuse of the process of the court — Principles applicable — High Court (Admiralty Jurisdiction) Act (Cap. 6) s. 3(1) — R.S.C. 1970, O. 18, r. 19.

Shipping — Claim within s. 3(1) of the High Court (Admiralty Jurisdiction) Act (Cap. 6).

In this case the plaintiffs of Panama City, Panama, had issued a writ of summons *in rem* against the defendants claiming a declaration that they are the owners of the vessel, to have possession of legal title to the vessel transferred to them and damages for breach of agreement. The vessel was arrested at Singapore at the instance of the plaintiffs. The owners of the vessel, Tai Ah Steamship Co. Ltd. of Taipeh, Taiwan, entered conditional appearance and subsequently applied to the High Court (1) that the writ of summons and all subsequent proceedings be set aside on the ground that the plaintiff's claim disclosed no reasonable cause of action of claim to ownership of the vessel or any other claim entitling the plaintiffs to invoke the admiralty jurisdiction of the court *in rem* against the vessel; (2) that all proceedings be stayed on the ground that the same was vexatious and oppressive and an abuse of the powers of the court.

Held: (1) the writ of summons in this case disclosed an application for relief which was clearly and squarely a claim within section 3(1)(a) of the High Court (Admiralty Jurisdiction) Act and therefore the court had jurisdiction *in rem* to entertain the claim;

(2) the task of the court was to ask itself on the pleadings so far as they have gone, without reading any affidavit whatsoever whether there was a triable issue falling within the list of section 3(1) of the High Court (Admiralty Jurisdiction) Act and in this case it was quite impossible for the court to say that the writ of summons disclosed no reasonable cause of action;

(3) the defendants had not satisfied the court that the action was vexatious or oppressive or an abuse of the process of the court;

(4) the application of the defendants must therefore be dismissed.

Cases referred to:-

(1) *Wenlock* v. *Monloney & Ors.* [1965] 1 W.L.R. 1238.
(2) *The Atlantic Star* [1973] 2 W.L.R. 795.
(3) *St. Pierre* v. *Smith American Stores (Gath and Chaves Limited)* [1936] 1 K.B. 382 at p. 398.
(4) *The Monte Urbasa* [1953] 1 Lloyds Rep. 587.

ADMIRALTY *IN REM*.

K. A. O'Connor for the plaintiffs.

Lee Kim Yew for the defendants.

Chua J.: On the 28th July, 1973, the plaintiffs of Panama City, Republic of Panama, issued a Writ of Summons in rem against the owners of the vessel "Hsing An" (hereinafter called "the vessel") claiming (a) "a declaration that they are the sole beneficial owners of the vessel of the port of Keelung"; (b) "As such sole beneficial owners, to have possession of the vessel decreed to them and legal title to the vessel transferred to them"; (c) "Damages for breach of agreement".

The vessel was arrested in Singapore on the 1st August, 1973, at the instance of the plaintiffs. Tai An Steamship Co. Ltd. of Taipei, Taiwan, the owners of the vessel entered conditional appearance on the 8th August, 1973.

The plaintiffs amended their writ of summons as underlined on the 12th September, 1973, without leave pursuant to Order 20 Rule 1 as follows:

"The plaintiffs claim:—

(a) A declaration that they are the sole beneficial owners of the vessel 'Hsing An' of the port of Keelung and/or that the title thereto and any rights derived by the Defendants from the agreement for her construction and sale by Taiwan Shipbuilding Corporation are held by the defendants as trustees for the absolute benefit of the plaintiffs as such sole beneficial owners.

(b) As such sole beneficial owners, to have possession of the vessel decreed to them and legal title to the vessel transferred to them.

(c) Alternatively specific performance of an agreement concluded in October 1972 between the plaintiffs and defendants for the transfer by the defendants to the plaintiffs of the vessel and/or all the defendants' rights in respect of the construction, ownership and delivery thereof; alternatively damages for breach of that agreement."

The defendants now move the court for the following orders:

"(1) That the writ of summons and all subsequent proceedings herein be set aside with costs on the ground that the plaintiffs' claim herein discloses no reasonable cause of action of claim to ownership of the vessel 'HSING AN' or any other claim entitling the plaintiffs to invoke the admiralty jurisdiction of this Honourable Court in rem against the said vessel.

(2) That the plaintiffs do pay damages to the defendants in respect of the losses and expenses suffered by the defendants as a result of the arrest of the vessel, m.v. 'HSING AN' and that the determination of the amount of such damages be referred to the Registrar;

(3) Further or alternatively that all proceedings be stayed on the grounds that the same is vexatious and oppressive to the defendants and an abuse of the process of the court;

(4) Such further and/or other relief as this Honourable Court may think fit."

Before proceeding further it is necessary to set out shortly the history of the dispute between the plaintiffs and the defendants.

By a shipbuilding contract dated the 21st January, 1971, (hereinafter referred to as "the shipbuilding contract") entered into between the Taiwan Shipbuilding Corporation of Keelung, Taiwan, and the defendants, the shipbuilders agreed to construct the vessel for the defendants. The vessel was duly delivered to the defendants on the 26th July, 1973.

Before the completion of the vessel, the defendants on 13th October, 1972, wrote to Teh Tung Steamship Co. Ltd. of Taipeh, a firm of shipbrokers, (hereinafter referred to as "Teh Tung") offering the vessel for sale. Teh Tung has also an office in Tokyo. Teh Tung of Tokyo, requested H. Clarkson & Co. Ltd. (hereinafter referred to as "Clarkson"), shipbrokers of London, to offer the vessel on the London market.

Clarkson then negotiated with Loucas Nomicos (England) Co. Ltd. (hereinafter referred to as "Nomicos"), agents of the plaintiffs, for the sale of the vessel. Telexes passed between Clarkson and Teh Tung, Tokyo, as to the terms and conditions of the sale.

According to the plaintiffs a binding contract either for the sale of the vessel or for the assignment of the shipbuilding contract had been reached on the 17th October, 1972, and it was contemplated that the agreement should be reduced to writing. However, on the 6th December, 1972, the plaintiffs were told that the defendants considered that the deal with the plaintiffs was terminated as a result of the defendants' failure to obtain an export licence from the Taiwan Government.

By a charterparty dated the 21st November, 1972, entered into between the defendants and Ideal United Steamship Corporated Ltd. of Liberia the defendants chartered the vessel to the said charterers with effect from the 26th July, 1973, for a period of three years with an option to the charterers to extend the charter for a further term of two years. The vessel was on time charter at the time of her arrest.

The defendants say that they did not at any time agree to sell the vessel to the plaintiffs nor have they agreed to assign to the plaintiffs the benefits of the shipbuilding contract. They say that by the time the transaction fell through the parties were still in negotiation.

The first relief asked for by the defendants is that the writ of summons and all subsequent proceedings be set aside on the ground that the plaintiffs' claim discloses no reasonable cause of action of claim to ownership of the vessel or any other claim entitling the plaintiffs to invoke the admiralty jurisdiction of this court in rem against the vessel.

The only pleading filed so far is the writ of summons but by the time this motion came on for hearing affidavits with documents exhibited thereto were filed by the defendants in support of the motion and by the plaintiffs in opposition thereto. A great deal of the affidavits, evidence and exhibits is devoted to argumentation and exposition of the facts in issue.

Counsel for the defendants read all the affidavits and the documents exhibited thereto. Counsel said that he read them not for the purpose of trying to persuade the court that the defendants are right in saying that there obviously was not a contract or that there obviously was a rightful failure to get Government approval as those matters would have to be looked into at the trial. He said that he read them for this reason, as far as the first relief is concerned, that whatever the transaction was it was subject to Government approval and that approval has not in fact been given, so that it never became an unconditional contract and that the property did not pass and the plaintiffs cannot have title or possessory right upon which, and which alone, they could found a proper arrest in this case.

It is submitted that the contract, if there was a contract, was plainly a contract for the assignment of the shipbuilding contract and not for the sale of the ship and that it was not part of the contract that the property in the vessel would ever pass through the defendants to the plaintiffs.

The court's attention was drawn to section 3(1)(a) and (m) of the High Court (Admiralty Jurisdiction) Act (Cap. 6)) (hereinafter called "the Act") which read as follows: —

"3-(1) The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims:-

(a) any claim to the possession or ownership of a ship or to the ownership of any share therein;

....

(m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;

...."

Counsel for the defendants says that if the contract is for the assignment of the shipbuilding contract it is not the ship but the shipbuilding contract that is to be assigned and if the defendants failed wrongfully to go ahead with the assignment any claim arising from that contract is not a claim for possession or ownership of the vessel and therefore the whole of the relief claimed in paragraphs (a) and (b) of the writ is completely misconceived even if the plaintiffs are right on every single issue in this case.

Counsel further submits that there is another reason why this claim is misconceived and it is this. The contract was subject to a condition which has never been performed and the conditional contract could not transfer any proprietary or possessory right to the plaintiffs while the condition remained outstanding. At the most the plaintiffs would have the right to call for performance and if the defendants failed to obtain the export licence the plaintiffs would have a claim for damages for breach of the express term of the contract but not a claim for possession or ownership of the vessel.

It is also submitted that this is not a claim in respect of the construction of the vessel and therefore does not come within section 3(1)(m).

As regards prayer (c) of the writ it is again submitted that the claim is misconceived. The argument, to put it shortly, is that the court could not order specific performance because of the presence of the condition and in any event the court would not in the circumstances of this case in the exercise of its discretion order specific performance.

The first question which the court has to consider is this — is there jurisdiction in rem to entertain the type of claim endorsed on the writ? The only claim the court should see is the claim on the writ and the court asks whether it is a claim which falls within the list of claims set out in section 3(1) of the Act. There is set out a long list of claims in respect of which the court has jurisdiction.

The second question which the court has to consider is this. Assuming that the claim on the writ is ostensibly within section 3(1), should the proceedings nevertheless be set aside because if the matter be examined the claim discloses no reasonable cause of action?

Order 18 rule 19 of the Rules of the Supreme Court, 1970, empowers the court by a summary process to stay or dismiss an action or enter judgment against the defendant where the pleading discloses no reasonable cause of action or defence or where the action or defence is shown to be frivolous or vexatious or otherwise an abuse of the process of the court.

One thing is clear on the many cases that have incorporated the phrase "no reasonable cause of action or defence" judicially and it is this, that it is not the function of the court in an interlocutory application of this sort to try the issues. It is the function of the court to decide simply whether there is a triable issue as opposed to something which is frivolous, oppressive or an abuse of the process of the court. Order 18 rule 19(2) disallows affidavit evidence on an application alleging that the pleading discloses no reasonable cause of action.

In *Wenlock* v. *Moloney & Ors.*[1] by his writ and statement of claim the plaintiff claimed damages against the three defendants for conspiring to oust him from the business of a company. The defendants delivered defences denying the allegations made against them in the statement of claim. After the pleadings were closed the plaintiff issued a summons for directions in the ordinary way but before it was heard the defendants applied to the master under R.S.C. Order 18 rule 19 (which is in similar terms to our Order 18 rule 19) alternatively under the inherent jurisdiction of the court, to strike out the pleadings and dismiss the action on the grounds, *inter alia*, that the pleadings

disclosed no reasonable cause of action. On the hearing of the application to strike out, ten affidavits were filed, five by the defendants in support of the application and five by the plaintiff in opposition thereto. The Master read the affidavits, the documents exhibited thereto and considered the issues of fact raised by the affidavits in a four-day hearing. There was no cross-examination on the affidavits or oral evidence. In his reserved judgment the Master held that the plaintiffs' action was most unlikely to succeed and he, accordingly, struck out the pleadings and the action. The plaintiff appealed to the judge in chambers who dismissed the appeal. On appeal to the Court of Appeal the court refused to look at the affidavits. It was held that the trial by the Master of issues of fact on affidavits to ascertain whether the plaintiff had a case was a usurpation of the functions of the trial judge and was a wholly improper procedure and that since the pleadings on their face disclosed a reasonable cause of action and raised issues of fact which required to be determined on oral evidence by a judge, the action would not be struck out but would proceed to trial.

Sellers L.J. in the course of his judgment said (at page 1242 G):

"If, as here, the only ground on which the action can be said to disclose no reasonable cause of action is that it is not one which is likely to succeed, then I doubt whether affidavit evidence was admissible".

It is contended for the defendants that the court can properly admit evidence (1) when it is considering whether it has jurisdiction or not to see whether it is a real claim and (2) in an action *in rem*. I decline to accept this submission.

So the task of the court is to ask itself on the pleadings as far as they have gone, without reading any affidavit whatsoever, whether there is a triable issue falling within the list of section 3(1) of the Act.

I find that the pleadings which the plaintiffs have delivered so far, that is to say the writ, disclose an application for relief which is clearly and squarely a claim within section 3(1)(a) of the Act and that it is really quite impossible to say that it discloses no reasonable cause of action.

The first relief claimed by the defendants, therefore, fails.

The second relief claimed by the defendants is that all proceedings be stayed on the ground that the same is vexatious and oppressive to the defendants and an abuse of the process of the court.

I now turn to the argument on either side. For the defendants it is argued that the Singapore court is not the natural forum for the plaintiffs; that the Taiwan court is the convenient forum for the determination of the plaintiffs' claim; that the balance of convenience is so overwhelming that it is vexatious or oppressive for the plaintiffs to sue the defendants here.

For the plaintiffs it is argued that the burden of proving that the present proceedings are vexatious or oppressive to the defendants is squarely and indeed heavily on the defendants; that this court will be very loath to turn away a plaintiff from proceeding in his chosen jurisdiction if to do so will prejudice him; that in the present case to allow the action to continue would cause no injustice to the defendants, whereas to stay it would cause prejudice to the plaintiffs, in particular it would deprive them of the security.

Counsel for the defendants submits that even though the court has jurisdiction of the claim as one which presents a reasonable cause of action the court in the circumstances of this case should exercise a discretion to stay the proceedings. He relies on the recent decision of the House of Lords in *The Atlantic Star*.[2]

The facts in *The Atlantic Star* are shortly these. On the night of 27th January, 1970, in dense fog, the Dutch motor vessel *Atlantic Star* collided with the Dutch motor barge *Bona Spes* in a channel of the River Schedule leading to one of the locks at Antwerp. *Bona Spes* was lying moored outside a Belgian dumb barge, *Hugo Van Der Goes*, which was moored to the quay on one side of the channel. As a result of the collision both barges were sunk with their cargoes, two crew members of *Hugo Van Der Goes* were drowned and port installations were damaged. The two barge owners applied to the Antwerp Commercial Court for the appointment of a court surveyor, according to the normal Belgian practice, to investigate the circumstances and causes of the collision. The surveyor appointed took statements from witnesses and collected various reports and documents. The parties concerned were represented by Belgian lawyers at the hearing before the surveyor. In January, 1971, the owners of *Hugo Van Der Goes* began an action against the owners of the *Atlantic Star* in the Commercial Court of Antwerp. In February, 1971, the surveyor made his report which inclined to the view that the collision was caused by the difficulties inherent in the dense fog and the site of the collision and that the *Atlantic Star* was not to blame. In May, 1971, Belgian insurers who had become liable to make payments to the dependents of the two deceased crew members of *Hugo Van Der Goes* exercised their right of subrogation and claimed damages against the owners of the *Atlantic Star* in the Commercial Court of Antwerp. In June, 1971, when the *Atlantic Star* was due in Liverpool the owner of *Bona Spes* began action in rem in the Admiralty Court of England against the owners of the *Atlantic Star*. To avoid the arrest of the ship the owners of the *Atlantic Star* accepted service of the writ, entered a conditional appearance and gave a guarantee of £80,000 for the claim and in July, 1971, issued a notice of motion to set aside the writ or stay the action. In August, 1971, and in December, 1971, the owners of part of the cargo on *Hugo Van Der Goes* and the insurers of the cargo of *Bona Spes* respectively started proceedings against the owners of the *Atlantic Star* in the Commercial Court of Antwerp. At this time, therefore, there were four actions arising out of the collision in the Commercial Court of Antwerp. In January, 1972, the owner of *Bona Spes* began an action against the owners of the *Atlantic Star* in the Commercial Court of Antwerp solely to preserve the Belgian time limit if his action were stayed. In March, 1972, Brandon J. in the exercise of his discretion refused a stay and dismissed the motion of the owners of the *Atlantic Star*. On appeal the Court of Appeal

affirmed that decision. The owners of the *Atlantic Star* appealed to the House of Lords. The appeal was allowed (two of their Lordships dissenting) and the English action was stayed.

Counsel says that *The Atlantic Star* is a decision on the general discretion of the court and that the House of Lords made it clear that the words "vexatious" and "oppressive" are to be widely interpreted in relation to the circumstances of each case and that in a proper case it can be exercised even in the absence of an existing suit elsewhere or even if there is no potential suit elsewhere.

The first matter I have to consider is what principles the court should apply in a case of this kind. The way in which the jurisdiction of the court to stay proceedings is to be exercised was stated by Scott L.J. in *St. Pierre* v. *South American Stores (Gath and Chaves), Limited*,[3] at 398: —

"The true rule about a stay under section 41, so far as relevant to this case, may I think be stated thus: (1) A mere balance of convenience is not a sufficient ground for depriving a plaintiff of the advantages of prosecuting his action in an English court if it is otherwise properly brought. The right of access to the King's Court must not be lightly refused. (2) In order to justify a stay two conditions must be satisfied, one positive and the other negative: (a) the defendant must satisfy the court that the continuance of the action would work an injustice because it would be oppressive or vexatious to him or would be an abuse of the process of the court in some other way; and (b) the stay must not cause an injustice to the plaintiff. On both the burden of proof is on the defendant."

The above observations of Scott L.J. were considered by Lord Wilberforce in *The Atlantic Star*. He said (at page 813): —

"This clear and emphatic statement has proved its usefulness over the years. It has been applied by judges, without difficulty, to a large variety of cases. I should be most reluctant, even if I were capable, of replacing it by some wider and more general principle. But too close and rigid an application of it may defeat the spirit which lies behind it. And this is particularly true of the words 'oppressive' and 'vexatious'. These words are not statutory words: as I hope to have shown from earlier cases, they are descriptive words which illustrate but do not confine the courts' general jurisdiction. They are pointers rather than boundary marks. They are capable of a strict, or technical application: conversely, if this house thinks fit, and as I think they should, they can in the future be interpreted more liberally. In my opinion, the passage cited embodies the following principles — all of which have been discussed in earlier authorities.

First, a plaintiff should not lightly be denied the right to sue in an English court, if jurisdiction is properly founded. The right is not absolute. The courts are open, even to actions between foreigners, relating to foreign matters. But they retain a residual power to stay their proceedings. I may add that, in relation, inter alia, to Admiralty suits, the existence of this power has been explicitly affirmed in the United States of America. Mr. Benadict, a writer of acknowledged authority, says:

'Admiralty courts have jurisdiction of Admiralty suits entirely between foreigners when proper service can be had or property attached, but it is discretionary with the court whether it will accept such jurisdiction or not.'

'The law of American Admiralty, ed. Knauth (1940), vol. 1, p. 260 and footnote). The judgment of Brandeis J. in *Canda Malting Co. Ltd.* v. *Paterson Steamships Ltd.*, 285 U.S. 413 supports this with several judicial citations.

Secondly, in considering whether a stay should be granted the court must take into account (i) any advantage to the plaintiff; (ii) any disadvantage to the defendant; this is the critical equation, and in some cases it will be a difficult one to establish. Generally this is done by an instinctive process — that is what discretion, in its essence, is. But there are perhaps some elements which it is possible to disengage and make explicit. In the first place, I do not think it would be right to say that any advantage to the plaintiff is sufficient to prevent a defendant from obtaining a stay. The cases say that the advantage must not be "fanciful" — that a 'substantial advantage' is enough. I do not even think that one can say that the advantage must be substantive (i.e. in the existence in English law of some more favourable substantive rules than would apply elsewhere) rather than adjectival. though more weight might be given to the former. An example given by Lord Denning M. R. illustrates this: a motor collision in Italy between two Italian citizens, one of whom catches the other here and sues him. Lord Denning M. R. says that this would be purely Italian and so (inferentially) should be stayed. But if this is right, it must follow that advantage to a plaintiff is not in itself decisive for the suit may well have been brought here because our courts give higher damages, or damages under broader heads: so if a stay is to be granted it must be because the court can additionally consider the nature of the case, and the disadvantage to the defendant. A *bona fide* advantage to a plaintiff is a solid weight in the scale, often a decisive weight, but not always so.

Then the disadvantage to the defendant: to be taken into account at all this must be serious, more than mere disadvantage of multiple suits; to prevail against the plaintiff's advantage, still more substantial — how much more depending how great the latter may be. The words 'oppressive' or 'vexatious' point this up as indicative of the degree and character of the prejudice that must be shown. I think too that there must be a relative element in assessing both advantage and disadvantage — relative to the individual circumstances of the plaintiff and defendant. This was certainly a factor in the marginal case of *Devine* v. *Cementation Co. Ltd.* [1963] N.I. 65 and without it, the case could hardly be supported"

The observations of Scott L.J. were also considered by Lord Kilbrandon in *The Atlantic Star*. He said (at page 822): —

"But for my part I am content to accept the view of my noble and learned friend that the judgment of Scott L.J. in *St. Pierre* v. *South American Stores (Gath & Chaves) Limited* must, after its general acceptation over the years in England and in the Commonwealth, be regarded as an authoritative exposition of the lines which should guide a court, when called up on to exercise its discretion whether or not to stay".

Lord Reid in the same case said (at page 800): —

"The authorities are dealt with by my noble and learned friend, Lord Wilberforce, and I shall not repeat that examination. They support the general proposition that a foreign plaintiff, who can establish jurisdiction against a foreign defendant by any method recognised by English law, is entitled to pursue his action in the English courts if he genuinely thinks that that will be to his advantage and is not acting merely vexatiously. Neither the parties nor the subject matter of the action need have any connection with England. There may be proceedings on the same subject matter in a foreign court. It may be a far more appropriate forum. The defendant may have to suffer great expense and inconvenience in coming here. In the end the decisions of the English and foreign courts may conflict. But nevertheless the plaintiff has a right to obtain the decision of an English court. He must not act vexatiously or oppressively or in abuse of the process of the English court, but these terms have been narrowly construed."

and further on in his judgment he said (at page 800H): —

"The existing basis is that the plaintiff must not be acting vexatiously, oppressively or in abuse of the process of the court. Those are flexible words and I think that in future they should be interpreted more liberally".

So these are the principles to be applied to the present case.

The main object of the plaintiffs in suing here was to obtain the necessary security for their claim and it could hardly be denied that this was an "advantage" which the plaintiffs can legitimately seek and which it would be an injustice to deny (per Lord Wilberforce).

The defendants say that they are quite prepared and will furnish in Taiwan security for the plaintiffs' claim in the sum of US Dollars Four Million but I think the court should view this offer in the light (1) that the defendants are a small company, so small that in October, 1972, they informed the Taiwan Ministry of Communications that they were going to have difficulties in operating the vessel; (2) that the defendants said that they would give security after the arrest of the vessel but such security was not forthcoming. One cannot blame the plaintiffs for saying that they have no confidence in the defendants' offer of security in Taiwan. The danger of the plaintiffs being completely exposed if the security here disappears is certainly very real. In *The Atlantic Star* the shipowner, the Holland-American Line, was a big firm of shipowners operating a line of ships and sailing regularly to the port of Antwerp.

For the defendants it has been urged very strongly upon me that in the exercise of the discretion of the court I should stay the action here as it will be much more convenient to proceed in Taiwan. I have considered this very carefully but I must look at all the surrounding features of this case to see how much there is in that submission.

In *The Monte Urbasa*[4] in the course of his judgment the President who heard the motion said (at page 590): —

"In the absence of anything in the nature of overwhelming convenience or indeed in the absence of any strong balance of convenience, in favour of the trial in Argentina, I do not think I ought to deprive the plaintiffs in this action of their right to proceed here."

In *The Atlantic Star*, which is relied on heavily by the defendants, the circumstances were exceptional not only in relation to security but also in the number of proceedings (four in all) that had been taken in Belgium and the exposure of the defendants in that case, on the application of the plaintiff, to a full inquiry in Belgium and the report on that inquiry appeared to be favourable to the defendants.

It is for the defendants in this motion to satisfy me in all the circumstances of the case that this action is vexatious or oppressive and after giving considerable thought to the matter, I have come to the conclusion that they have not satisfied me that this action is vexatious or oppressive or an abuse of the process of the court.

In the result I do not stay the action in this court as prayed by the defendants.

This motion fails and is dismissed with costs.

Motion dismissed.

Solicitors: *Drew & Napier; Lee & Lee.*

HOUSING & DEVELOPMENT BOARD v. LAI SENG KAK

[O.C.J. (Chua J.) November 2, 1973]

[Singapore — Suit No. 305 of 1972]

Housing and Development Board — Application for purchase of flat — False statement — Failure to exercise re-entry right — Continuation to receive purchase payments — Whether there was waiver of right to forfeit.

The defendant on 23 October 1964 applied to purchase a two-room flat in Queenstown Estate from the plaintiffs. In the application form the defendant declared that neither he nor any member of the family listed in the application owned any land or house and that he clearly understood that the said application for purchase would be cancelled and any monies paid would be forfeited if any of the information he had given in the application was found to be false. In the particulars of his family the defendant listed his father.

On 16 November 1964 the parties entered into an agreement whereby the plaintiffs agreed to grant and the defendant agreed to accept a lease for the flat in question for a term of 99 years upon certain considerations. Pursuant to that agreement a lease dated 19 December 1967 was executed by the plaintiffs in favour of the defendant and a mortgage of the same date was executed by the defendant to the plaintiffs.

In May 1967 the plaintiffs discovered that the defendant's father was the owner of property known as No. 453 Lorong 3 since 1961. Although the plaintiffs knew that the defendant had made the false declaration, they granted the lease to the defendant.

Held: the conduct of the plaintiffs in granting the lease to the defendant although they knew that the defendant had made the false declaration amounted to a waiver of their right to forfeit.

Case referred to:-

(1) *Croft* v. *Lumley* 10 E.R. 672.

SUIT.

Goh Joon Seng for the plaintiffs.

Amarjit Singh for the defendant.

Chua J.: The short facts are these. On the 23rd October, 1964, the defendant submitted an application for the purchase of a two-room flat in Queenstown Estate from the plaintiffs. In the said application the defendant declared, *inter alia*, that neither he nor any member of the family listed in the said application owned any land or house and that he clearly understood that the said monies paid would be forfeited if any of the information he had given in the application was found to be false.

In the "Particulars of Applicant's Family", the defendant listed his father Lai Shan Siong.

On the 16th November, 1964, the plaintiffs and the defendant entered into an agreement whereby it was agreed that the plaintiffs would grant and the defendant accept a lease of a flat known as No. 119-F Commonwealth Close, Queenstown, Singapore, 3, for a term of 99 years in consideration of the capital payment of $4,900 and a yearly rent of $1. The said capital payment was to be paid by an initial payment of $900 and the balance by monthly instalments of $46 each with effect from 1st December, 1964.

Pursuant to the said Agreement, a lease dated the 19th December, 1967, for a term of 99 years commencing on the 1st January, 1967, was executed by the plaintiffs in favour of the defendant and a mortgage dated the 19th December, 1967, was executed by the defendant by which the defendant assigned the said flat to the plaintiffs to secure payment of the balance of the capital payment. Clause 4 of the lease, so far as it is relevant to this case, provides that "if the Lessee herein has submitted a false statement in his form of application for the purchase of the Flat then ... it shall be lawful for the Board at any time thereafter to re-enter upon the Flat or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to any right